

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.166/Coch/2018 : Asst.Year 2013-2014

M/s.Abad Fisheries Pvt. Ltd. C/o.Kaimal & Co., CAs 8/1365, T D East Road Mattancherry Cochin – 682 002. PAN : AAFCA6821M.	Vs.	The Asst.Commissioner of Income-tax, Corp Cir.1(1) Kochi.
(Appellant)		(Respondent)

Appellant by : Sri.P.K.Sasidharan
Respondent by : Sri.Alok Mitra

Date of Hearing : 30.04.2018	Date of Pronouncement : 02.05.2019
-------------------------------------	-----------------------------------------------

ORDER

Per George George K, JM

This appeal at the instance of the assessee is directed against the Commissioner of Income-tax's order dated 23.03.2018 passed u/s 263 of the I.T.Act. The relevant assessment year is 2013-2014.

2. The ground raised reads as follows:-

"1. The order of the Commissioner of Income Tax, dated 23.3.2018 u/s 263 of the Income Tax Act is bad in law and without jurisdiction.

2. The observation of the Commissioner of Income Tax, that the assessment order is erroneous in so far

as it is prejudicial to the interest of the revenue is without any basis.

3. The Commissioner of Income Tax ought to have taken note of the judgment of the Kerala High Court in the appellant's own case with regard to deduction u/s 10B and held that the appellant is eligible for additional depreciation u/s 32(1)(iia).

4. For these and other grounds that may be permitted to be adduced at the time of hearing of the case, it is prayed that the order of the Commissioner of Income Tax u/s 263 may be set aside / cancelled."

3. The brief facts of the case are as follows:

The assessee is a company engaged in the business of processing and export of frozen marine products. For the assessment year 2013-2014, the return of income was filed on 29.09.2013 declaring a total income of Rs.4,02,98,905. Scrutiny assessment was completed vide order dated 16.02|2016 determining total taxable income at Rs.5,07,61,900.

3.1 Notice was issued u/s 263 of the I.T.Act by the CIT for the reason that in the order completed u/s 143(3) of the I.T.Act, the assessee was wrongly granted additional depreciation on plant and machinery installed during the previous year amounting to Rs.30,00,463. According to the CIT, the additional depreciation granted to the assessee is inadmissible for the reason that it is not engaged in the manufacture or production of any article of thing. The CIT

further placed reliance on the ITAT's order of the Cochin Bench in the case of ACIT v. M/s.Cochin Fozen Food Exports Pvt. Ltd. in ITA No.197/Coch/2010 (order dated 27.04.2012).

3.2 In response to the notice u/s 263 of the I.T.Act, the assessee's authorized representative filed objections vide letter dated 14.03.2018. In the said letter the assessee had listed out various processing involved in the business of the assessee and contended that it is engaged in the business of manufacture and production of article of thing. Further, the assessee relied on the order of the ITAT in ITA No.567 & 568/Coch/2004 (case of predecessor's firm) wherein it was granted the benefit of deduction u/s 10B of the I.T.Act.

3.3 However, the CIT rejected the contentions of the assessee and passed order u/s 263 of the I.T.Act on 23.03.2018. The relevant finding of the CIT reads as follows:-

"5. The submissions made by the Assessee have been carefully considered. The issue is whether the Assessee-Company is engaged in the manufacture or production of any article of thing so as to make it eligible for claiming additional depreciation under Section 31(1)(iia). From a perusal of the records, it is noticed that this aspect has not been considered while framing the Assessment Order. The Assessee-Company is engaged in the business of export of finished frozen marine products. It has now listed out various processes involved in its operation in a general manner. Its reference to Section 10B will not help its cause since this Section works in a totally different plane altogether. The business carried on by the assessee namely, processing and export of frozen marine products would not come under 'manufacture or production of new article or thing' as held by

Hon'ble ITAT, Cochin Bench in the case of M/s.Cochin Frozen Food Exports Pvt. Ltd. (ITA No.197/Coch/2010 order dated 27.04.2012). However, this issue has not been considered by the Assessing Officer during the course of assessment proceedings and while passing the impugned Assessment Order. To this extent there is an omission by the Assessing Officer.

6. The above omission by the Assessing Officer in the Assessment Order is erroneous in so far as it is prejudicial to the interests of Revenue. Therefore, the Assessment Order on the above issue is set aside to the Assessing Officer for de-novo examination and to pass a speaking order in accordance with law as per time limit specified under Section 153 of the Income Tax Act, after affording due opportunity to the Assessee."

4. Aggrieved by the order of the CIT, the assessee has preferred this appeal before the Tribunal. The learned Counsel for the assessee has filed a paper book comprising of 32 pages enclosing the written submission, the ITAT's order in the case of M/s.Abad Fisheries, Hon'ble Kerala High Court order confirming the ITAT's order etc. The learned Counsel listed out the processing undertaken by the assessee and submitted that the assessee has undertaken Individually Quick Frozen (IQF) Technology where each shrimps is individually frozen at minus 28 degree centigrade and the process involved is preferred in international market over products frozen under conventional methods and the same involves the manufacture or process of article or thing, hence the assessee was entitled to additional depreciation u/s 32(1)(ia) of the I.T.Act. The

learned AR has filed a brief written submission. The relevant portion of the same reads as follows:-

"The assessment order is set aside for de-novo examination and passing a speaking order in accordance with law. It may appear that the assessing officer has the liberty to examine the issue afresh. But in Paragraph 5 of the order the Commissioner has made various observations which make it obligatory on the part of the assessing officer to disallow the claim for additional depreciation. Even with reference to the finding of the Kerala High Court regarding the exemption u/s.10B, the Commissioner has observed that "its reference to section 10B will not help its cause, since this section works in a totally different plane altogether." It is further stated that in view of the decision of the ITAT, Cochin Bench in the case of Cochin Frozen Food Exports (P) Ltd., the appellant cannot be considered as engaged in the manufacture or production of new article or thing. So long as these observations are there the assessing officer will have to disallow the claim."

5. The learned Departmental Representative, on the other hand, strongly supported the order passed u/s 263 of the I.T.Act.

6. We have heard the rival submissions and perused the material on record. On perusal of the assessment order dated 16.02.2016, which was subject matter of revision u/s 263 of the I.T.Act, we find that the claim of additional depreciation u/s 32(1)(iia) of the I.T.Act was granted to the assessee without any deliberation. The learned AR has not placed any evidence / material on record to show that the additional depreciation claimed was subject matter of examination by the A.O. during the course of assessment proceedings and thereafter deduction was granted. Since deduction u/s 32(1)(iia) of the I.T.Act was granted without any deliberation

by the Assessing Officer, we are of the view that the assessment order dated 16.02.2016 is erroneous and prejudicial to the interest of the revenue. Therefore, the CIT had correctly invoked his revisionary power u/s 263 of the I.T.Act.

6.1 However, the apprehension of the assessee is that though in paragraph 6 of the impugned order of the CIT had set aside the assessment for *de novo* examination, in paragraph 5 of the order of the CIT, various observations are made which make it obligatory on the part of the Assessing Officer to disallow the claim of additional depreciation. The learned AR had submitted before us that the assessee has undertaken various processes which is technically superior to the conventional method of preservation of seafood for the purpose of export. It was stated that the said processes tantamount to manufacture or production. Therefore, the assessee was entitled to deduction u/s 32(1)(iia) of the I.T.Act. Further, the learned Counsel submitted that the processes undertaken in the case of Cochin Frozen Food Exports Pvt. Ltd. (supra) relied on by the CIT is totally different from the processes undertaken by the assessee in the instant case. Therefore, it was contended that the CIT has erred in drawing comparison of the case considered by the Tribunal in Cochin Frozen Food Exports Pvt. Ltd. (supra) and the assessee's case. We are not aware of the fate of the order of Cochin Bench of the Tribunal in the case of Cochin Frozen Food Exports Pvt. Ltd. (supra). We are also not aware of the processes

undertaken in that case whether it is identical / similar to the processes undertaken by the assessee in the instant case. The Assessing Officer shall compare the processes undertaken by the assessee in the instant case and that of the assessee in Cochin Frozen Food Exports Pvt. Ltd. (supra). In other words, the Assessing Officer shall independently come to a conclusion whether there is a manufacture or production of a new article or thing in the facts of the instant case, irrespective of the observation made by the CIT. With these observations, we dispose off the matter. It is ordered accordingly.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on this 02nd day of May, 2019.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Cochin ; Dated : 02nd May, 2019.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The Pr.CIT-1, Kochi.
4. The CIT Kochi.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin